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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1192

CAMILLE R. GUMP, EXECUTRIX, EDWIN LETTS OLIVER, EXECUTOR OF THE ESTATE OF ALFRED S. GUMP, DECEASED, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 25–43) is reported in 42 B. T. A. 197. The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 248–256) is reported in 124 F. (2d) 540.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 31, 1941 (R. 257). A petition for a rehearing was denied February 3, 1942 (R. 258). The petition for a writ of certiorari

was filed April 29, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below erred in approving the Board's holding that the entire community estate, acquired prior to July 29, 1927, must be included in the gross estate of the husband under Section 302 of the Revenue Act of 1926.

2. Whether the court below erred in approving the Board's holding that the full value, as of the date of death, of unpaid installment notes owned by the decedent must be included in his gross estate.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 302 [as amended by Sec. 404 of the Revenue Act of 1934, c. 277, 48 Stat. 680]. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States. * * *
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> SEC. 303. For the purpose of the tax the value of the net estate shall be determined—
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> (a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, * * * but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

* * * * *

Treasury Regulations 80 (1934 Ed.):

ART. 13. *Valuations.*—(1) *General.*—The value of all property includible in the gross estate is the fair market value thereof at the time of decedent's death. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. * * *

* * * * *

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of decedent's death, unless the executor establishes a lower value, or it is shown that they are worthless. * * *

STATEMENT

The petitioners are the executors of the estate of Alfred S. Gump, who died testate on January 23, 1934 (R. 27). Decedent was married on March 28, 1905, and until his death, he and his wife were continuously domiciled in California (R. 27).

The petitioners filed a federal estate tax return in which they disclosed community property of a total value of $799,269.41; but they eliminated one-half as representing the community interest of the widow, leaving a gross estate of $399,634.71. At the time of filing the return, petitioners paid a federal estate tax in the amount of $12,554.86 (R. 27).

Among the assets of the community shown in the estate tax return, there was included the following item: "Payments due under contract between Alfred S. Gump, Abraham L. Gump and William E. Gump—$384,994.45" (R. 27–28).

The S. & G. Gump Company was organized about 1899. On March 28, 1905, the date of decedent's marriage, the decedent owned 25 shares of the capital stock of the Gump Company, which had a book value of $41,636. During the period from the date of his marriage in 1905 to February 9, 1929, the decedent and his brothers, Abraham L. and William E., devoted their entire time and efforts to the developing and building up of the business of the Gump Company, and the success of that company was largely due, and in equal

measure, to the ability and efforts of decedent and his brothers. From March 17, 1921, to February 9, 1929, the decedent held 2,664 shares of common stock of the Gump Company (R. 28).

The decedent and his wife entered into two agreements with Abraham L. Gump, as of February 9 and December 23, 1929. Pursuant to the terms of these agreements, the decedent and his wife sold to Abraham L. Gump 2,710 shares (46 shares of which belonged to his wife) of the common stock of the Gump Company for the book value thereof, or $1,100,976.25, and 15 shares of the capital stock of an affiliated realty company for $84,018.20, or a total of $1,184,994.45. The purchase price was payable to decedent as follows: $500,000 in cash on February 9, 1929 ($84,018.20 of which was in payment of the 15 shares of the realty company), the remaining $684,994.45 in seven annual installments. The liability for these installments was evidenced by a series of notes, six for $100,000 each, and one for $84,994.45, all of which bore interest at 5% per annum. The first note was payable on February 1, 1930, and the last note, of $84,994.45, on February 1, 1936. The notes were all made payable to the decedent and were endorsed by William E. Gump. It was stated in the agreements that the decedent was the owner of 2,664 shares of the Gump Company and the 15 shares of the realty company and that his wife was the owner of 46

shares of the Gump Company (R. 29). Separate accounting for the latter shares was ordered (R. 30).

At the date of the death of decedent, there had been paid under the above contracts the total amount of $800,000, and four notes remained unpaid in the principal amount of $384,994.45 (R. 29).

In auditing the estate tax return filed by taxpayers, the Commissioner determined that the gross estate of decedent consisted of the entire community estate of decedent and his wife, having a value of $802,737.41, and in computing that value he included in the gross estate the four notes unpaid at the death of decedent at their face value of $384,994.45 (R. 30–31).

The taxpayers filed an income tax return for decedent covering the period from January 1 to January 23, 1934. The taxpayers, not desiring to include in such return the gain realized by the transmission of the unpaid installment obligations of Abraham L. Gump by reason of the death of decedent, as provided for in Section 44 (d) of the Revenue Act of 1934,[1] filed a bond at the time of filing the income tax return, conditioned upon

[1] Section 44 (d) provides:

(d) GAIN OR LOSS UPON DISPOSITION OF INSTALLMENT OBLIGATIONS.—If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the

the return as income by all persons receiving any payments in satisfaction of the installment obligations in the same proportion of such payments as would be returnable as income by the decedent if he had lived and had received such payments. This bond was accepted and approved by the Commissioner (R. 31).

The Commissioner determined that 74.0458% of each dollar collected on such installment obligations represented taxable income to be accounted for when collected. He further determined that the estate of decedent and the beneficiaries thereof should return as income and pay income tax on the amount of gain, i. e., 74.0458% of the amounts paid by Abraham L. Gump since January 23, 1934 (R. 31–32).

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case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This subsection shall not apply to the transmission at death of installment obligations if there is filed with the Commissioner, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment.

The amount of federal income tax that would have been payable on the income of decedent for the period of January 1 to January 23, 1934, would have been $25,877.59 had there been reported as taxable income for that period the amount of gain, or $285,072.22, included in the principal of the unpaid installment obligations in question (R. 32).

The Board of Tax Appeals concluded (R. 37) that, so far as the record shows, the entire estate of the deceased husband was community property acquired prior to July 29, 1927, in which the rights of the wife were so restricted as to require the entire estate to be subjected to the federal estate tax. The Board further concluded (R. 41) that the full value, as of the date of death, of the four installment notes must be included in the gross estate. The court below affirmed (R. 257).

ARGUMENT

Two principal questions are here presented: (1) whether all, rather than one-half, of the community property should have been included in the decedent's gross estate; and (2) whether the value of the four unpaid notes outstanding at the time of decedent's death were part of his gross estate. We submit that the decision of the court below on both these questions is correct, and is not in conflict with any decisions of the Federal or California courts.

1. The California Community Property Law was radically changed in 1927 so as to give the wife certain "vested" rights (compare *United States* v. *Robbins*, 269 U. S. 315, with *United States* v. *Malcolm*, 282 U. S. 792), and it is plain that the community property acquired by the decedent up to the time of the 1927 amendment was taxable in full as part of his gross estate. The petitioners contend, however, that the increase in value of that property between the date of the 1927 amendment and the date of sale in 1929 became vested equally in both spouses under the new California law, and that one-half of that increase was therefore not part of the husband's gross estate. It does not appear to be disputed that under the California decisions the wife would be entitled to one-half the increment if it were attributable to the personal efforts of the husband, but not if it were mere enhancement of capital investment. In this case the property consisted of stock in a corporation, which by 1927 had become an established business; and the increase in value of the stock during the period 1927–1929 was merely a natural enhancement in a prosperous era. It was entirely reasonable to suppose that the decedent's $20,000 salary fully compensated him for his personal efforts. Upon the basis of these facts, the court below correctly concluded that the Board's decision was supported by *Van Camp* v. *Van Camp*, 53 Cal. App.

17, and *Shea* v. *Commissioner*, 81 F. (2d) 937 (C. C. A. 9th), and that decisions such as *Pereira* v. *Pereira*, 156 Cal. 1 (relied upon by petitioners), were distinguishable.

The petitioners also contend here (Br. 16–25) that the court below erred in failing to determine the effect of the 1923 amendment to the Community Property Law of California. Such a contention presents no basis for the issuance of the writ. In the first place, the point was not properly before the court below. The original petition to the Board of Tax Appeals (R. 10) made specific reference only to the 1927 amendment. The assignments of error in the petition for review filed with the court below (R. 53–55) made no specific reference to this contention. In any event, even if the point had been properly presented and even if the 1923 amendment had the effect which the taxpayers contend, the same factual situation would also bar relief. Moreover, it may be observed that the 1923 amendment has been considered ineffective to change the basic nature of the community property holdings for federal tax purposes. *Hirsch* v. *United States*, 62 F. (2d) 128 (C. C. A. 9th), certiorari denied, 289 U. S. 735. See also *Talcott* v. *United States*, 23 F. (2d) 897 (C. C. A. 9th), certiorari denied, 277 U. S. 604.[2]

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[2] Cases such as *Bank of America Nat. Trust & Savings Ass'n* v. *Rogan*, 33 F. Supp. 183 (S. D. Cal.), and *United States* v. *Goodyear*, 99 F. (2d) 523 (C. C. A. 9th), relied

2. The four installment notes were properly included in decedent's gross estate. Section 302 of the Revenue Act of 1926, *supra,* provides that "the value at the time of his death of all property" shall be included in the gross estate of the decedent; and it is not disputed here that the four notes were worth their face amount of $384,994.45.

Petitioners seek to avoid the unambiguous provisions of Section 302 by contending that approximately three-fourths of the value of the notes constituted "unrealized" gain which would be subjected to income tax when the notes were subsequently paid, and that only the remaining one-fourth of the value of the notes should be included in the gross estate. But there is nothing in the estate tax statute which requires the exclusion of the decedent's property from his gross estate merely because it represents "unrealized" profit. To the contrary, Section 302 requires that the decedent's property be included at its then value. It is immaterial that the cost of the property to the decedent may have been much less than its value at the date of death, and that the difference has not yet been subjected to income tax. Morever, in this case, the installment notes represented gain which was realized in 1929 upon

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upon by the taxpayers here (Br. 20, 23) are clearly distinguishable in that the parties there, by specific agreement subsequent to the 1927 amendment, changed the status of property which was concededly restricted under the California law prior to the 1927 amendment.

the sale of the stock, but taxation of that gain was merely *deferred* by reason of the option afforded to the seller under the installment sales provisions of the revenue laws. *Nuckolls* v. *United States*, 76 F. (2d) 357 (C. C. A. 10th); *Crane* v. *Helvering*, 76 F. (2d) 99 (C. C. A. 2d).

Finally, petitioners contend in the alternative that, if the installment notes are to be included in the gross estate at their full value (Br. 62), "then in equity petitioners are entitled to a credit of not less than $25,877.59 against the Federal estate tax," which figure is the amount of income tax they would have paid if the installments had been accrued as of the date of death. The court below properly pointed out (R. 255) that there was no statutory authority for such a credit. On this point, petitioners rely primarily upon *Bull* v. *United States*, 295 U. S. 247. However, that case involved unique facts, clearly distinguishable from the facts of the case at bar. The tax there in question had been assessed and paid and the right of recoupment under the special circumstances developed was the main issue before the Court. The profits there involved were profits realized by the estate after the death of the decedent, and not, as here, profits realized by the decedent prior to his death. This Court pointed out in the *Bull* case that the identical money—not a right to receive the amount on the one hand and the actual receipt resulting from that right on

the other—was the basis of the two inconsistent assessments. In *Helvering* v. *Enright,* 312 U. S. 636, 641, this Court, in a footnote referring to the *Bull* decision, pointed out that there might well be in some instances a direct relationship between items of income to the estate and items included in the corpus of the estate through valuation of a specific right to receive such income.

CONCLUSION

The court below correctly applied generally accepted principles to the facts of this particular case. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

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